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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/621,618
Filing Date: July 18, 2003
Appellant(s): UMBAUGH, RAYMOND E.

Harold A. Burdick
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12-8-05 appealing from the Office action mailed 4-6-05.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

The statement of the status of claims contained in the brief is correct.

This appeal involves claims 1-20.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

Further, the following new grounds of rejection are set forth below regarding claims 15-20.

Claims 15-18, rejected under 35 U.S.C. 103(a) to Japanese patent JP 4-88928.

Claim 19, rejected under 35 U.S.C. 103(a) to the Japanese patent JP 4-88928 in view of U.S. Patent No. 5,225,342 to Farrell.

Claim 20, rejected under 35 U.S.C. 103(a) to the Japanese patent JP 4-88928 in view of the European patent EP 0052264.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

JP 4-88928	Takahashi	3-1992
5,225,342	Farrell	7-1993
4,057,930	Barham	11-1977
EP 0052264	Hillel	5-1982

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 6-7, 9-11, 13 and 15-18 are rejected under 35 U.S.C. 102(b) as being anticipated by JP Pat. No. 4-88928.

Referring to claims 1-2, 9 and 15, the Japanese patent discloses a seed germination and plant supporting utility comprising, a spacer – at the middle of items 1-2 as seen in figure 6, having a central opening therethrough between first and second sides of the spacer – see for example figure 6, and mesh – at 3-5, secured on both sides of the spacer – see figure 6, wherein the mesh is held spaced apart a selected distance by the spacer and enshrouds the central opening

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– see for example figure 6, the mesh having mesh openings of a size small enough to directly support a seed thereon – see figures 1-7 and the English abstract, at the first side of the spacer – and to be securely engaged by plant root growth therethrough at the second side of the spacer – see for example figures 1-7 and the English abstract. The Japanese patent further disclose a first retainer – at 1d,2c,5a,4a, associable with the spacer at one of the sides thereof for holding the mesh thereat with each of the retainers having an opening therethrough in correspondence with the spacer opening – see for example figure 6. The Japanese patent further disclose the first and second mesh each have a diameter greater than the inside diameter of the spacer ring and each positioned at a different of the ends of the spacer – see for example figures 4-6.

Referring to claim 3, the Japanese patent further disclose a second retainer –at 1d,2c,4a,5a, associable with the spacer at another of the sides thereof for holding the mesh thereat – see for example figure 6.

Referring to claims 6 and 17, the Japanese patent disclose the mesh at one of the sides of the spacer has a mesh size greater than the mesh size of the mesh at another of the sides of the spacer – see for example figures 4-6.

Referring to claim 7, the Japanese patent disclose the spacer includes first and second spacer components – see for example figure 6, each defining a part of the central opening – see for example figure 6, and with each having a different one of the sides of the spacer thereat, the first and second spacer components each having an interfacing surface configured to abut one another and surrounding the central opening spaced from the different one of the sides thereat – see for example proximate 1-2 in figure 6 of the Japanese patent, the mesh being maintained between the interface surfaces – see for example figures 4-6.

Referring to claims 10 and 18, the Japanese patent further disclose a second spacer – at 1-2, having a passageway therethrough between first and second ends of the second spacer, a third mesh swath – at 3-5, positioned at the first end of the second spacer and a third retainer – at 1d,2c,4a,5a, associable with the second spacer at the first end thereof adjacent to the third mesh swath thereat, the third retainer having an opening therethrough in correspondence with the second spacer passageway when configured to be associable with both the first and second spacers at the second ends thereof – see for example figures 4-6.

Referring to claim 11, the Japanese patent further disclose the first and third retainers each include a retaining lip adjacent to the openings therethrough configured to abut the first ends of the first and second spacers respectively to thereby anchor the first and third mesh swathes – see for example figures 4-6.

Referring to claims 13 and 16, the Japanese patent further disclose the first and second retainers each include a retaining lip – see figure 6, adjacent to the opening therethrough configured to abut a respective one of the first and second ends of the first spacer when associated therewith to thereby anchor the first and second mesh swathes positioned thereat – see for example figure 6.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Japanese patent as applied to claim 1 above, and further in view of U.S. Patent No. 4,057,930 to Barham.

Referring to claim 4, the Japanese patent further discloses the spacer is ring shaped – see for example figures 6-7, having an inside diameter and an outside diameter – see for example figures 6-7, wherein the mesh includes first and second swathes – see 3-5 in figure 6, each with a diameter greater than the inside diameter of the spacer and each positioned at a different one of the sides of the spacer – see for example figure 6. The Japanese patent does not disclose the mesh swathes are fiber. Barham does disclose fiber mesh – at 13 – see for example column 4 lines 60-65. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the Japanese patent and add the fiber mesh of Barham, so as to allow for the mesh to not corrode during use.

Referring to claim 5, the Japanese patent as modified by Barham further discloses first and second removable retainer rings – at 1d, 2c, 5a, 4a each receivable over a different one of the sides of the spacer holding the mesh thereat – see for example figures 6-7 of the Japanese patent.

Claims 8, 12, 14 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Japanese patent as applied to claims 1, 9, 13 or 15 above, and further in view of U.S. Patent No. 5,225,342 to Farrell.

Referring to claims 8, 12 and 19, the Japanese patent does not disclose a maintenance platform having an opening therethrough for receiving and locating the spacer and the mesh when assembled, the first retainer comprising a resilient yet deformable material configured to be securely receivable in the opening through the maintenance platform. Farrell does disclose a

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maintenance platform – at 202-212, having an opening therethrough for receiving and locating the spacer and the mesh when assembled, the first retainer comprising a resilient yet deformable material configured to be securely receivable in the opening through the maintenance platform – see for example figures 7a-7c, and the second retainer comprising a lip – proximate 323,330, at the opening through the maintenance platform – see for example figures 7a-7c. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the Japanese patent and add the maintenance platform of Farrell, so as to allow for the user to easily replace components, remove the seeds and clean the device.

Referring to claim 14, the Japanese patent further discloses the spacer is ring shaped – see at 1-2 in figure 6. The Japanese patent does not disclose each of the first and second retainers are defined by a ring shaped body configured to be fit over a respective one of the first spacer ends, the retainer lip extending annularly from one end of the ring shaped body inwardly at the opening therethrough. Farrell discloses the spacer is ring shaped – see figures 7a-7c, and wherein each of the first and second retainers are defined by a ring shaped body configured to be fit over a respective one of the first spacer ends the retaining lip – proximate 272 and 274 and 264, extending annularly from one end of the ring shaped body inwardly at the opening therethrough – see for example figures 7a-7c. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the Japanese patent and add the first and second retainers of Farrell, so as to allow for the components of the device to be securely held together.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over the Japanese patent as modified by Farrell as applied to claim 19 above, and further in view of EP Patent No. 0052264. The Japanese patent as modified by Farrell does not disclose a containment and

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feeding apparatus and a positioning structure, the positioning structure having stations configured to receive the maintenance platform with the openings through the platform exposed from both above and below the platform and the positioning structure, the positioning structure configured to be received at the containment and feeding apparatus with the openings through the platform exposed from below to operations of the containment and feeding apparatus. The European patent does disclose a containment and feeding apparatus – at 1, and a positioning structure – at 3 – see figures 1-2, the positioning structure having stations configured to receive the maintenance platform – at 2, with the openings through the platform exposed from both above and below the platform and the positioning structure, the positioning structure configured to be received at the containment and feeding apparatus with the openings through the platform exposed from below to operations of the containment and feeding apparatus – see for example figures 1-2. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the Japanese patent as modified by Farrell and add the containment and feeding apparatus of the European patent, so as to allow for the device to propagate plant growth inside the device.

New Grounds of Rejection

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Japanese patent JP 4-88928 as applied to claim 1 above, and further in view of U.S. Patent No. 4,057,930 to Barham.

Referring to claim 4, the Japanese patent further discloses the spacer is surrounds/rings the mesh – see for example figures 6-7, having an inside diameter and an outside diameter – see for example figures 6-7, wherein the mesh includes first and second swathes – see 3-5 in figure 6, each with a diameter greater than the inside diameter of the spacer and each positioned at a different one of the sides of the spacer – see for example figure 6. The Japanese patent does not disclose the spacer has a circular shape of a ring and the mesh has a circular diameter. However, it would have been obvious to take the spacer and mesh of the Japanese patent and change its shape into a round ring-like shape, for aesthetic purposes. The Japanese patent further does not disclose the mesh swathes are fiber. Barham does disclose fiber mesh – at 13 – see for example column 4 lines 60-65. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the Japanese patent and add the fiber mesh of Barham, so as to allow for the mesh to not corrode during use.

Referring to claim 5, the Japanese patent as modified by Barham further discloses first and second removable retainer rings – at 1d,2c,5a,4a each receivable over a different one of the sides of the spacer holding the mesh thereat – see for example figures 6-7 of the Japanese patent.

Claims 15-18 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over the Japanese patent JP 4-88928.

Referring to claim 15, the Japanese patent discloses a seed germination and plant supporting utility comprising, a spacer – at the middle of items 1-2 as seen in figure 6, having a

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central opening therethrough between first and second sides of the spacer which surrounds/rings the mesh – see for example figure 6, and mesh – at 3-5, secured on both sides of the spacer – see figure 6, wherein the mesh is held spaced apart a selected distance by the spacer and enshrouds the central opening – see for example figure 6, the mesh having mesh openings of a size small enough to directly support a seed thereon – see figures 1-7 and the English abstract, at the first side of the spacer and to be securely engaged by plant root growth therethrough at the second side of the spacer – see for example figures 1-7 and the English abstract. The Japanese patent further disclose a first retainer – at 1d,2c,5a,4a, associable with the spacer at one of the sides thereof for holding the mesh thereat with each of the retainers having an opening therethrough in correspondence with the spacer opening – see for example figure 6. The Japanese patent further disclose the first and second mesh each have a diameter greater than the inside diameter of the spacer and each positioned at a different of the ends of the spacer – see for example figures 4-6. The Japanese patent does not disclose the spacer has a circular shape of a ring and the mesh has a circular diameter. However, it would have been obvious to take the spacer and mesh of the Japanese patent and change its shape into a round ring-like shape, for aesthetic purposes.

Referring to claim 16, the Japanese patent further disclose the first and second retainers each include a retaining lip – see figure 6, adjacent to the opening therethrough configured to abut a respective one of the first and second ends of the first spacer when associated therewith to thereby anchor the first and second mesh swathes positioned thereat – see fore example figure 6.

Referring to claim 17, the Japanese patent disclose the mesh at one of the sides of the spacer has a mesh size greater than the mesh size of the mesh at another of the sides of the spacer – see for example figures 4-6.

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Referring to claim 18, the Japanese patent further disclose a second spacer – at 1-2, having a passageway therethrough between first and second ends of the second spacer, a third mesh swath – at 3-5, positioned at the first end of the second spacer and a third retainer – at 1d,2c,4a,5a, associable with the second spacer at the first end thereof adjacent to the third mesh swath thereat, the third retainer having an opening therethrough in correspondence with the second spacer passageway when configured to be associable with both the first and second spacers at the second ends thereof – see for example figures 4-6.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over the Japanese patent as applied to claims 15 above, and further in view of U.S. Patent No. 5,225,342 to Farrell.

Referring to claim 19, the Japanese patent does not disclose a maintenance platform having an opening therethrough for receiving and locating the spacer and the mesh when assembled, the first retainer comprising a resilient yet deformable material configured to be securely receivable in the opening through the maintenance platform. Farrell does disclose a maintenance platform – at 202-212, having an opening therethrough for receiving and locating the spacer and the mesh when assembled, the first retainer comprising a resilient yet deformable material configured to be securely receivable in the opening through the maintenance platform – see for example figures 7a-7c, and the second retainer comprising a lip – proximate 323,330, at the opening through the maintenance platform – see for example figures 7a-7c. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the Japanese patent and add the maintenance platform of Farrell, so as to allow for the user to easily replace components, remove the seeds and clean the device.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over the Japanese patent as modified by Farrell as applied to claim 19 above, and further in view of EP Patent No. 0052264. The Japanese patent as modified by Farrell does not disclose a containment and feeding apparatus and a positioning structure, the positioning structure having stations configured to receive the maintenance platform with the openings through the platform exposed from both above and below the platform and the positioning structure, the positioning structure configured to be received at the containment and feeding apparatus with the openings through the platform exposed from below to operations of the containment and feeding apparatus. The European patent does disclose a containment and feeding apparatus – at 1, and a positioning structure – at 3 – see figures 1-2, the positioning structure having stations configured to receive the maintenance platform – at 2, with the openings through the platform exposed from both above and below the platform and the positioning structure, the positioning structure configured to be received at the containment and feeding apparatus with the openings through the platform exposed from below to operations of the containment and feeding apparatus – see for example figures 1-2. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the Japanese patent as modified by Farrell and add the containment and feeding apparatus of the European patent, so as to allow for the device to propagate plant growth inside the device.

(10) Response to Argument

Regarding claims 1, 3 and 6-7, appellant raises questions of the material – at 5 of the Japanese reference JP 4-88928 being a mesh. As seen in figures 1-2 and 4, the material – at 5 is a

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thin material with a plurality of small openings extending through the thickness of the material – at 5 and therefore it is deemed that item – 5 of the Japanese reference is a mesh material.

Further, the spacer can be any of the middle stackable members – at 1-2 as seen in figure 6 of the Japanese reference which shows three spacer members – at 1-2 having one other member – at 1-2 on top of and another member – at 1-2, on the bottom of each respective middle stackable member. Each member – at 1-2, comprises a mesh – at 5 located on the bottom of the member – at 1-2 as seen in figures 1 and 6. Therefore each middle stackable member – at 1-2, has a mesh material – at 5 at its bottom end secured to each of the members – at 1-2 via the retaining elements – at 2a-2c and 4a as seen in figures 1-2 and 4,6. Further, another mesh material – at 5 is secured to the top of each middle stackable member – at 1-2 via the respective other member – at 1-2 located above the middle stackable members. Therefore, in the stackable configuration each spacer element – at 1-2 located in the middle of the stackable configuration as seen in figure 6 of the Japanese patent, has a mesh material secured at the lower end and the upper end of the spacer element as seen in figure 6. Appellant argues that the mesh is not secured to the space elements. However as seen in figure 6, the mesh – at 6 is held in place via the bottom and top edges of the spacer elements – at 2a-2c and 4a.

Further, the Japanese reference discloses the respective mesh materials – at 5 are held a distance apart via the spacer – at 1-2 as seen in figure 6. The mesh – at 5 supports seeds – at 13 as seen in figure 7f, the seeds are watered as seen – at 6 in figure 6 and therefore sprout and grow into a plant – at 10 which has root growth capable of extending through the openings in the mesh.

Regarding claims 2-3, the Japanese patent discloses multiple first and second retainers – at 2a-2c and 4a-4c on the middle stackable elements – at 1-2 in figure 6, for holding the mesh – at 5 as seen in figures 1 and 6.

Regarding claim 7, the Japanese patent discloses abutting surface of the first and second spacer elements – at any two of the middle stackable elements – at 1-2 in figure 6, have abutting portions – at 2a-2c and 4a which secure the mesh – at 5 to the spacers as seen in figures 1 and 6.

Regarding claims 9-11 and 13, appellant raises questions of the material – at 5 of the Japanese reference JP 4-88928 being a mesh. As seen in figures 1-2 and 4, the material – at 5 is a thin material with a plurality of small openings extending through the thickness of the material – at 5 and therefore it is deemed that item – 5 of the Japanese reference is a mesh material.

Further, the spacer can be any of the middle stackable members – at 1-2 as seen in figure 6 of the Japanese reference which shows three spacer members – at 1-2 having one other member – at 1-2 on top of and another member – at 1-2, on the bottom of each respective middle stackable member. Each member – at 1-2, comprises a mesh – at 5 located on the bottom of the member – at 1-2 as seen in figures 1 and 6. Therefore each middle stackable member – at 1-2, has a mesh material – at 5 at its bottom end secured to each of the members – at 1-2 via the retaining elements – at 2a-2c and 4a as seen in figures 1-2 and 4,6. Further, another mesh material – at 5 is secured to the top of each middle stackable member – at 1-2 via the respective other member – at 1-2 located above the middle stackable members. Therefore, in the stackable configuration each spacer element – at 1-2 located in the middle of the stackable configuration as seen in figure 6 of the Japanese patent, has a mesh material secured at the lower end and the upper end of the spacer element as seen in figure 6. Appellant argues that the mesh is not secured

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to the space elements. However as seen in figure 6, the mesh – at 6 is held in place via the bottom and top edges of the spacer elements – at 2a-2c and 4a.

Further, the Japanese reference discloses the respective mesh materials – at 5 are held a distance apart via the spacer – at 1-2 as seen in figure 6. The mesh – at 5 supports seeds – at 13 as seen in figure 7f, the seeds are watered as seen – at 6 in figure 6 and therefore sprout and grow into a plant – at 10 which has root growth capable of extending through the openings in the mesh.

Further, the Japanese reference discloses multiple first and second retainers – at 2a-2c and 4a-4c on the middle stackable elements – at 1-2 in figure 6, for holding the mesh – at 5 as seen in figures 1 and 6.

Regarding claim 10, the Japanese reference discloses three meshes – at 5, secured to any two of the middle stackable spacers – at 1-2 as seen in figure 6. Each of the three meshes, are secured to the spacers – at 1-2 via one of the three retainer elements – at 2a-2c and 4a located at ends of the spacer elements – at 1-2 as seen in figure 6.

Regarding claims 11 and 13, the Japanese reference discloses the retainers – at 2a-2c and 4a-4c each include a lip – at the outer surface of the retainer elements, with the outer surfaces of the retainers – at 2a-2c and 4a, securing the meshes – at 5, to the spacers – at 1-2 as seen in figures 1 and 6.

Regarding claim 15, appellant relies upon the arguments to claims 1 and 9 and therefore see the response to these arguments above in section (10) of this action. Further, appellant argues that the additional structural limitations in claim 15 are not disclosed by the Japanese reference. The Japanese reference discloses spacer rings – at 1-2, which surround and ring the mesh – at 5,

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with the mesh – at 5 having a diameter/perimeter as seen in figures 1 and 6, and the diameter of the mesh – at 5, being greater than the inside diameter of the spacer ring as seen in figures 1, 4 and 6, where the mesh – at 5 is of a greater size than the inner surfaces of the spacer elements – 1-2 – at the inner surface of the side walls – at 1-2 as seen in figure 6.

Regarding claim 16, the Japanese reference discloses caps – at the respective retainer elements – at 2a-2c and 4a as seen in figure 6 where in the stackable configuration the retainer elements act as caps/covers for the spacer elements – at 1-2.

Regarding claim 17, the Japanese reference discloses other mesh – at 4b-4c as seen in figure 4 having a mesh size greater than the mesh size of element – 5 as seen in figure 4 with each of the mesh elements – at 4b,4c and 5 being located on each side of the middle stackable elements – at 1-2 as seen in figure 6.

Regarding claim 18, appellant does not disclose which of the claim limitations in claim 18 the Japanese reference is lacking and therefore this argument is moot.

Regarding claims 4-5, appellant only argues with respect to the primary reference, the Japanese reference and does not argue the combination of the Japanese reference and the Barham reference US 4057930, therefore this argument is deemed to be moot.

Regarding claims 8, 12 and 19, appellant argues that one of ordinary skill in the art would not be motivated to combine the Japanese reference with the Farrell reference US 5225342. As seen in figures 1-6 of the Japanese reference and figures 7a-7b of the Farrell reference each of these references discloses devices used to promote the growth of plants located inside the devices with each device having a mesh material – at 4b,4c and 5 of the Japanese reference and – at 230,240 and 265 as seen in figure 7a of the Farrell reference. Therefore, since each reference has

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similar structure and function, it is deemed that they can be combined given the motivation given in section (9) of this action above.

Regarding claim 20, appellant argues that one of ordinary skill in the art would not be motivated to combine the Japanese reference with the European reference EP 0052264. As seen in figures 1-6 of the Japanese reference and figures 1-3 of the European reference each of these references discloses devices used to promote the growth of plants located inside the devices with each device having a mesh material – at 4b,4c and 5 of the Japanese reference and – at 21 as seen in figure 3 of the European reference. Therefore, since each reference has similar structure and function, it is deemed that they can be combined given the motivation given in section (9) of this action above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section (9) above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of


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rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) Maintain appeal. Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,


David Parsley 

A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:

Conferees:

Jeff Gellner 

Peter Poon 


PETER M. POON
SUPERVISORY PATENT EXAMINER
2/14/06